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October 4, 2023

BY ECF

Hon. Judith C. McCarthy
United States District Court
Southern District of New York
300 Quarropas Street
White Plains, NY 10601

Re: *Relyea v. Huestis*
22 CV 3126 (JCM)

Dear Magistrate Judge McCarthy:

Bergstein & Ullrich, LLP and I have represented Brendan Relyea (“Brendan”) from the outset of the litigation. As we previously wrote, Brendan passed on August 2, 2023. Brendan’s father, Robert Relyea (“Mr. Relyea”), has been appointed Administrator of the Estate of Brendan Relyea. In this capacity, Mr. Relyea has retained our services to represent him. We now move, pursuant to Rule 25(a) of the Federal Rules of Civil Procedure, for an Order substituting Robert Relyea, in his capacity as Administrator of the Estate of Brendan Relyea, as the proper plaintiff. Thomas Gambino, Esq., counsel for defendant James Huestis, consents to this motion. In connection with this motion we annex the Letters of Administration issued to Mr. Relyea as Exhibit 1. We annex a proposed amended caption as Exhibit 2.

No grounds exist to deny the motion. Rule 25 of the Federal Rules of Civil Procedure provides, in relevant part, that “[i]f a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent’s successor or representative.” Fed. R. Civ. Proc. 25(a)(1). Claims brought pursuant to Section 1983, as was the claim asserted by Brendan against defendant Huestis, survive a plaintiff’s death. *Yates v. Smith*, 17-CV-1227, 2019 U.S. Dist. LEXIS 159592, *2 (N.D.N.Y. Sep. 19, 2019) (citing *Barrett v. United States*, 689 F.2d 324, 331 (2d Cir. 1982)). And Mr. Relyea, as Administrator, is a “proper party.” *Id.* at *3 (citations omitted).

For the reasons articulated above, the instant motion should be granted, Mr. Relyea substituted as plaintiff and the caption amended as reflected in Exhibit 2.

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Thank you for your attention to this matter.

Respectfully submitted,

Scott A. Korenbaum

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SAK:sak
Enclosures

cc: All Counsel (via ECF)